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No. 85-675

In the Supreme Court of the United States

OCTOBER TERM, 1985

FOUR MILLION, TWO HUNDRED FIFTY-FIVE THOUSAND, SIX HUNDRED AND TWENTY-FIVE DOLLARS AND THIRTY-NINE CENTS, ETC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the government's evidence was sufficient to establish that funds seized from a Colombian business operating in Florida were substantially connected to illegal drug activity and were subject to forfeiture under 21 U.S.C. 881(a)(6).

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-26) is reported at 762 F.2d 895. The opinion of the district court (Supp. App. 1-26) is reported at 551 F. Supp. 314.

JURISDICTION

The judgment of the court of appeals was entered on June 11, 1985, and a petition for rehearing was

denied on July 16, 1985 (Pet. App. 1). The petition for a writ of certiorari was filed on October 10, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In August 1981, the United States Customs Service seized a bank account containing $4,255,625.39 and currency totalling $3,686,639 from a Colombian money exchange business operating in Florida. Shortly thereafter, the government filed complaints in the United States District Court for the Southern District of Florida seeking civil forfeiture of the seized monies. The government asserted that the funds were subject to forfeiture because they were brought into the United States without the filing of required currency transportation reports, see 31 U.S.C. 5317, and because they were used in illegal narcotics transactions, see 21 U.S.C. 881(a)(6). Petitioner Beno Ghitis and other claimants sought return of the seized funds.[1] Following a consolidated bench trial, the district court forfeited the total amount of $7,942,264.39 on both bases alleged in the complaints (Supp. App. 27-29). The court of appeals affirmed (Pet. App. 1-26).[2]

1. The facts, set out in the opinions below, show that Ghitis operated a money exchange firm in Colombia, under the name Viajes Atlas, which converted

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[1] The petition lists a number of persons and organizations as claimants to the funds. However, "Ghitis and his business" (Pet. 24) are the primary claimants; the other claims result from checks written upon the seized bank account.

[2] The court of appeals affirmed the forfeiture under 21 U.S.C. 881 and did not consider petitioner's challenge to the customs forfeiture under 31 U.S.C. 5317. Pet. App. 4.

dollars into Colombian pesos. In March 1980, the firm opened an account with a Miami, Florida bank under the name "SONAL" and commenced a series of frequent, large deposits of small denomination American currency. The SONAL deposits were initially made by persons identified only as "Guillermo" and "Jaime" and ranged from $500,000 to $1,000,000 per week. The Florida bank charged a service fee of .125% to process the deposits. Pet. App. 4-5; Supp. App. 2-3.

In May 1980, the bank expressed concern over the SONAL account and declined to accept further cash deposits. Ghitis thereafter met with the branch manager. Ghitis disclaimed involvement in illegal drug transactions, but admitted that he might be dealing with persons who were involved in drug trafficking.[3] Thereafter, the bank agreed to continue accepting SONAL deposits but increased its fee four-fold and also required SONAL to purchase a money-counting machine for the bank's use. Cash deposits continued at the rate of $2 million to $6 million per week. Pet. App. 5; Supp. App. 4.

During this period, Victor Eisenstein, a close associate of petitioner Ghitis, had taken over the task of making the cash deposits. Eisenstein moved to the building that housed the bank's main branch and conducted SONAL's business out of a scantly-furnished office bearing the name "American Overseas Enterprises." Columbian couriers delivered large amounts of small denomination currency in suitcases,

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[3] The person who sold the largest amount of cash to SONAL, Carlos Molina, was identified by a Customs Agent as being involved in the narcotics business (Tr. 287). The district court identified Molina as, "apparently among other things," a money exchanger (Supp. App. 14-15).

cardboard boxes, and duffel bags. The couriers did not identify themselves and were largely unknown to Eisenstein. They did not request and, on at least several occasions, refused to accept receipts. Despite the large amount of cash kept on hand, the office lacked a safe or vault, and money was left lying about in cardboard boxes. Pet. App. 6; Supp. App. 3, 12.

In February 1981, the bank president met with Eisenstein. The bank, concerned about recent local arrests of money launderers, urged Eisenstein to find the source of the money (Tr. 928). Eisenstein asked Ghitis about the source and origin of the enormous cash deposits. Ghitis wrote in response that the money was received by businessmen in connection with importing and exporting "agricultural products, raw materials, etc." and other unspecified endeavors (Pet. App. 6).[4] Ghitis also advised Eisenstein that "even though some of these transactions involved the handling of cash, they do not give rise to mistaken associations with illegal operations which are so fashionable these days in Florida" (Pet. App. 6-7; Supp. App. 5, 9). Some time later, Ghitis met again with the bank president. The president concluded from their conversation that Ghitis knew that probably some of the SONAL money was narcotics related (Tr. 941-944, 1224).

During this period, Ghitis became concerned that the government might seize the currency and forfeit it. He suggested to the branch manager, and ultimately to the bank president, that the bank make a "loan" to SONAL, covering the money in the SONAL account. Ghitis apparently believed that the sham

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[4] In fact, none of the businessmen reflected in Ghitis' records were listed in Customs Service records as exporters or importers to or from the United States (Supp. App. 5-6).

loan would ensure that, if the government seized the SONAL account, Ghitis would have the loan proceeds and the bank would have a priority claim to the SONAL account superior to that of the government. The bank rejected this idea. Pet. App. 7; Supp. App. 9.

In August 1981, the bank and Ghitis again discussed the continuing large cash deposits and Ghitis repeated his suspicion that the money he was receiving might have some involvement in drug transactions. Ghitis later expressed concern to Eisenstein that the government might be investigating SONAL and advised Eisenstein that he would explain SONAL's operations to government agents, but only if he would be given guarantees against arrest when he entered the United States. Pet. App. 8; Supp. App. 10. The bank continued to accept SONAL deposits at the rate of several million dollars per week. However, the bank increased its charge from .5% of the total deposits to a flat fee of $300,000 a month. SONAL agreed to pay the increased fee. Supp. App. 6, 10-11.

During this period, Eisenstein agreed to cooperate with federal customs agents in their investigation of the SONAL deposits. Between August 18 and 20, Colombian couriers delivered more than $7 million to Eisenstein for deposit into the SONAL account under circumstances suggesting that the money had its source in drug transactions.[5] Following surveillance

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[5] For example, following delivery of the money, one of the couriers, "Alberto Rodriguez," purchased an airline ticket for Colombia under the name "Carlos Torro." He later abandoned his vehicle following surveillance by customs agents. A subsequent search of the unclaimed car by Miami Beach police uncovered a hidden compartment behind the rear seat

and further investigation, the agents seized the currency stored in Eisenstein's office and the money on deposit in SONAL's account. Pet. App. 8-13; Supp. App. 13-16.

Subsequent examination of the available records revealed that in the eight-month period from January to August 1981 over $242 million in small denomination bills—averaging over $1 million per day—passed through the SONAL bank account. Pet. App. 4-5, 13.

2. The district court concluded that the extraordinary circumstances surrounding the SONAL transactions, including the amount, nature, and origin of the deposits, established probable cause to believe that the seized funds were proceeds from, or involved in, illegal drug transactions (Supp. App. 20-22). The court further concluded that petitioners failed to rebut this showing or to establish that they were "innocent owners" (*ibid.*). The court therefore ordered the money forfeited under 21 U.S.C. 881(a)(6). The court also concluded that the money was illegally transported into the country and therefore forfeitable under 31 U.S.C. 5317. Supp. App. 22-23.

The court of appeals affirmed. It agreed with the district court that the evidence established a substantial connection between the seized money and illegal drug trafficking (Pet. App. 13-18). It rejected Ghitis's claims that the money was cleansed of any drug taint by intermediate transactions and that Ghitis was an "innocent owner" (Pet. App. 19-24).

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that, police testified, was likely used to store narcotics. Rodriguez's driver's license (issued under the name "Torro") bore the address of an empty warehouse that once housed a business owned by Carlos Molina's brother. Pet. App. 8-12; Supp. App. 13-16.

ARGUMENT

Petitioners challenge the court of appeals' affirmance of the district court's findings that (1) there was a substantial connection between the seized funds and illegal drug transactions; and (2) the funds were "proceeds" of illegal drug transactions. These findings were fully supported by the evidence adduced at trial and do not merit further review. Furthermore, under this Court's settled practice of declining to reconsider factual findings affirmed on appeal, the petition should be denied. *E.g.*, *Branti* v. *Finkel*, 445 U.S. 507, 512 n.6 (1980).

1. Petitioners acknowledge (Pet. 10) the evidentiary standards that control civil forfeitures under 21 U.S.C. 881. The government must initially establish probable cause to believe that a substantial connection exists between the seized funds and the illegal narcotics activity; the claimant then bears the burden of establishing that the funds are free from drug involvement. See *United States* v. *$13,000 in United States Currency*, 733 F.2d 581, 584 (8th Cir. 1984); *United States* v. *$2,500 in United States Currency*, 689 F.2d 10, 12 (2d Cir. 1982), cert. denied, No. 82-5857 (Mar. 19, 1984); *United States* v. *$364,960 in United States Currency*, 661 F.2d 319, 323 (5th Cir. 1981). Petitioners suggest, however, that the government can meet its initial burden only by showing that the seized funds were involved in specific, identifiable drug transactions (Pet. 12). Petitioners cite no authority to support this proposition. Instead, they simply cite forfeiture cases (Pet. 12-13) in which the government has relied on evidence of specific drug transactions to establish probable cause.

While evidence of specific drug transactions will often be used to support probable cause for a civil forfeiture, it is not the only type of evidence that

will suffice. None of the cases cited by petitioners requires proof of particular drug transactions. Indeed, as the court of appeals noted (Pet. App. 16-17 n. 19), other decisions have upheld forfeitures under 21 U.S.C. 881 in the absence of proof that the property was connected to a particular drug purchase. See, *e.g.*, *United States* v. *Brock*, 747 F.2d 761 (D.C. Cir. 1984); *United States* v. *$13,000 in United States Currency*, 733 F.2d 581 (8th Cir. 1984); *United States* v. *$2,500 in United States Currency*, 689 F.2d 10 (2d Cir. 1982), cert. denied, No. 82-5857 (Mar. 19, 1984).

Petitioners attempt (Pet. 13-14) to distinguish *Brock* and *$13,000* on the ground that the property in those cases was seized from persons with past drug involvement. That distinction is unsupportable. Although evidence that the money was seized from a person with a past drug record is relevant to the probable cause determination, other evidence can be of equal or greater relevance. A probable cause determination is generally "a practical, common-sense decision" based on the totality of the circumstances. *Illinois* v. *Gates*, 462 U.S. 213, 238 (1983). In the present case, the extraordinary circumstances surrounding the SONAL transactions provide compelling grounds to believe that the seized funds were the product of illegal drug transactions. The deposits were so very unusual, the amount of currency involved was so huge, and the origins and method of handling the currency so questionable, that the courts could properly find probable cause to believe that the funds resulted from illegal narcotics trade—indeed, this conclusion is not simply probable, but virtually certain.[6] Petitioners simply ask this Court to

[6] For example, the Colombian couriers transporting the funds were anonymous and Ghitis himself had no records of

ignore the obvious common sense inference, shared by Ghitis, Eisenstein, and the bank, that the SONAL deposits were drug-generated.[7]

Petitioners also claim (Pet. 18) that, in all events, they overcame the government's showing of probable cause by demonstrating that the money came from "legitimate sources." However, petitioners merely showed that Ghitis received the money from Carlos Molina, another Colombian money exchanger of questionable reputation. Petitioners made no attempt to show where Molina derived the money and maintain that "[i]t was not Ghitis' burden to prove the source of Molina's customers' currency" (Pet. 19). Plainly, if the funds actually were derived from legitimate non-drug transactions, petitioners could have shown that this was the case. Instead, petitioners have attempted to shrug off their burden of

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their full names; the couriers delivered millions of dollars in small denomination bills in cardboard boxes and refused receipts; the Miami office had no security system or protection for the large sums of money, which were left lying on the office floor between the day of delivery and the day they were deposited in the bank; and the sole employee in Miami never counted the piles of currency left with him. See Pet. App. 15.

[7] As previously noted, Ghitis himself admitted to the bank that the money might have its source in drug transactions, though he disavowed actual knowledge of that fact. The bank president likewise suspected that the money was derived from drug traffic and accordingly raised the bank's fee for processing the currency to an exorbitant rate, which Ghitis agreed to pay. See Pet. App. 5-8.

Indeed, despite Ghitis's disavowal of actual knowledge that the money was drug-related, he attempted to protect his sums from an anticipated government seizure and forfeiture by seeking the bank's participation in a sham loan. Ghitis likewise offered to provide an explanation to the government only if he was given immunity from arrest. *Id.* at 7-8.

proof by arguing that when money has been passed between Colombian money exchangers prior to deposit in United States banks, it is effectively cleansed of any drug taint for purposes of United States forfeiture laws. This proposition finds no support in 21 U.S.C. 881. Indeed, if this were true, Colombian money exchangers could freely launder drug money through United States banks by simply passing the funds through a "prewash" cycle in Colombian exchange houses. The lower courts properly concluded that petitioners failed to meet their burden of showing that the funds were not, in fact, subject to forfeiture.

Contrary to petitioners' contentions (Pet. 16-18, 24), the courts below did not forfeit the SONAL funds simply because Latins possessed unexplained currency. Instead, the courts carefully evaluated the totality of the circumstances surrounding the SONAL deposits. See Pet. App. 16 n.18. The evidence unmistakably established probable cause to believe that the seized funds were drug-related. Petitioners failed to prove otherwise. The lower courts' findings are plainly reasonable and merit no further review.

2. Petitioners also contend (Pet. 20-24) that the seized funds were not "proceeds" of drug transactions under 21 U.S.C. 881(a)(6). They claim that even if the dollars were originally received as payment for Colombian drugs, they were no longer drug "proceeds" because Ghitis and Molina had converted the drug dealers' "proceeds" into pesos. According to petitioners (Pet. 23), only the pesos—now in the hands of unknown parties—are subject to forfeiture under the statute.

The court of appeals correctly found (Pet. App. 19) that this argument is meritless. First, there is

"no evidence in the record indicating that Ghitis, or SONAL, gave pesos in exchange for the forfeited money prior to the seizure of the money by the government." Pet. App. 21 n.23. But in any event, as the court of appeals properly noted (*id.* at 19-21), Congress intended that persons, such as money launderers, who knowingly do business with drug dealers and facilitate their criminal activities would be subject to the forfeiture provisions of 21 U.S.C. 881. "The statute authorizes the forfeiture of 'all proceeds traceable to [a narcotics] exchange,' 21 U.S.C. § 881(a)(6), and does not limit forfeiture to property found in the hands of a drug dealer." Pet. App. 19.

Indeed, Congress specifically provided an "innocent owner" exception to forfeiture in cases where a claimant lacks "knowledge or consent" concerning the illegal activity. 21 U.S.C. 881(a)(6). As the court observed (Pet. App. 19-20), the "innocent owner" defense would be unnecessary if forfeiture were limited to property within the hands of the drug dealer. In the present case, the district court specifically found that Ghitis and SONAL were not "innocent owners" within the contemplation of 21 U.S.C. 881(a)(6). Supp. App. 10, 22. The court of appeals agreed (Pet. App. 21-24). Both courts found that petitioner Ghitis had failed to meet his burden of establishing that he was unaware of the source of the currency (Pet. App. 24; Supp. App. 18, 22). Those factual findings do not warrant review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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